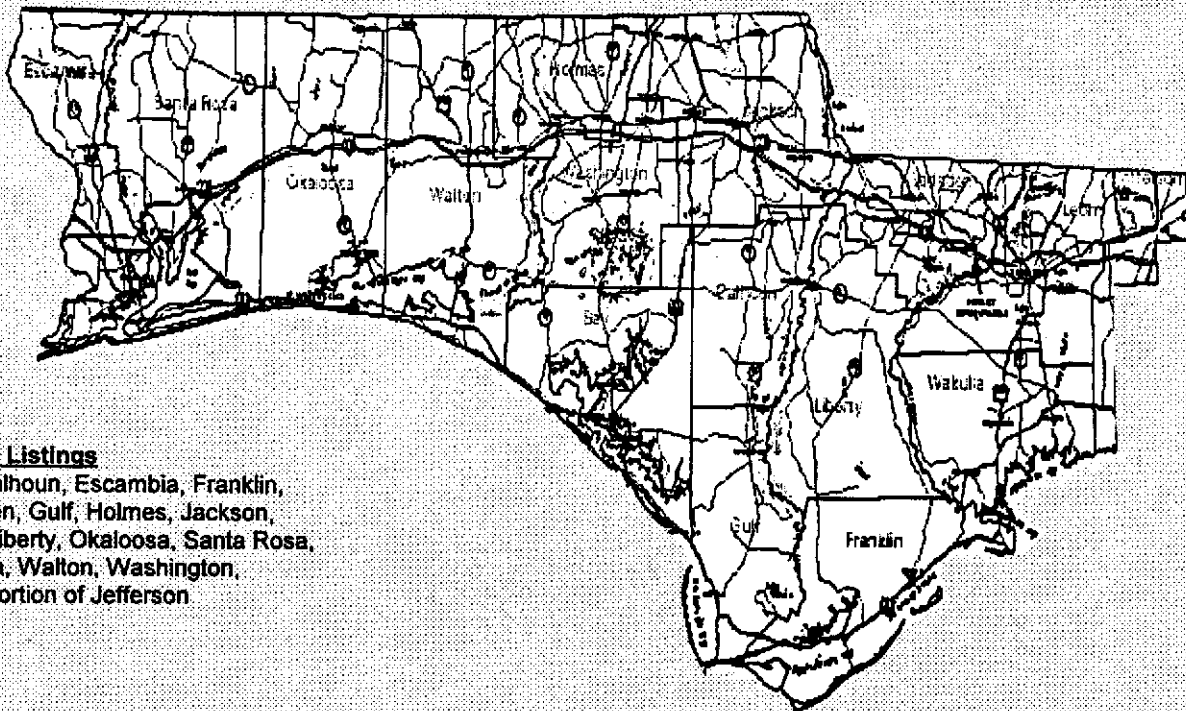


**Monitoring the progress
of a plan to implement an
environmental resource permitting program
for the
Northwest Florida
Water Management District**



County Listings

Bay, Calhoun, Escambia, Franklin,
Gadsden, Gulf, Holmes, Jackson,
Leon, Liberty, Okaloosa, Santa Rosa,
Wakulla, Walton, Washington,
and a portion of Jefferson.

Interim Project

Final Report Prepared By:
Committee on Water and Resource Management
Florida House of Representatives

October 1999

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MONTHLY MONITORING REPORT
on development of a plan to implement an ERP program in Northwest Florida
pursuant to CS/HB 2067 (chapter 99-353 , L.O.F.)

Report #1 - June 14-July 14, 1999

Background:

In the area of the state within the boundaries of the Northwest Florida WMD, wetlands activities are regulated under a different program than the environmental resource permitting (ERP) program used in the rest of the state since 1994. The Northwest Florida WMD only processes permits for the construction, operation and maintenance of dams used in agricultural operations. The Department of Environmental Protection (DEP), meanwhile, regulates wetlands activities using permitting rules which were in effect under the old Henderson Wetlands Act of 1984. The Henderson Act differs from the ERP program in several ways. The two primary differences are that under the Henderson Act, activities in isolated wetlands or in uplands that could impact water quality or wildlife habitat are not subject to state regulation, and an evaluation of the impacts of stormwater runoff is not part of the permit review.

Section 373.4145, F.S., was created in 1993 to provide for the five-year, interim environmental permitting program for the Northwest Florida area, as described above. This authority was set to expire on July 1, 1999. During the 1999 legislative session, CS/HB 2067 was passed to extend the repeal date for another four years, and to direct the Northwest WMD and DEP to begin developing a plan to make wetlands regulations in the Panhandle more consistent with those enforced elsewhere in the state. The bill was signed into law by the Governor on June 11, 1999, and is designated chapter 99-353, Laws of Florida.

Under CS/HB 2067:

- o The repeal date of interim wetlands permitting program for the Northwest Florida WMD is extended to July 1, 2003.
- o DEP and the Northwest Florida WMD are directed to "begin developing a plan" by which the permitting for activities proposed in surface waters and wetlands shall fully comply with the provisions of part IV, chapter 373, F.S., (the ERP program) beginning July 1, 2003.

- o The plan shall address the division of ERP responsibilities between DEP and the Northwest Florida WMD; the process by which the Northwest Florida WMD shall implement the existing wetlands delineation methodology; the ability of the Northwest Florida WMD to implement federal permitting programs related to activities in surface waters and wetlands; and the Chapter 70 (Bert Harris Private Property Rights Act) implications of implementing an ERP program within the Northwest Florida WMD.
- o DEP and the Northwest Florida WMD shall submit a joint interim report on their progress in developing the plan to the Governor and the Legislature on March 1, 2001, and a final report on March 1, 2003.

Staff of the Water and Resource Management Committee is monitoring the agencies' progress in implementing these provisions of CS/HB 2067.

Status of DEP's Activities:

DEP staff has had preliminary conversations with the Northwest Florida WMD staff, but nothing substantive -- such as the division of workload in collecting data, performing legal research, or writing the report -- has been decided. Staff of DEP's Bureau of Environmental Resource Permitting has been briefing the agency's new leadership team about the issues, and are seeking direction on how to proceed.

Also, DEP's Office of General Counsel is reviewing whether the agency can begin drafting the rules necessary to implement the program, even though the legislation did not give DEP specific authority to do so. DEP does not intend to initiate rulemaking at this time, according to agency staff.

Status of NFWMD's activities:

Staff of the Northwest Florida WMD is letting DEP take the lead on coordinating the development of the plan.

Related events/information:

On June 29, 1999, a report critical of DEP's Northwest District Office was issued by a Special Grand Jury on Air and Water Quality empaneled by the 1st Judicial Circuit State Attorney, representing the Panhandle. The 120-page report included 27 grand jury recommendations, two of which are related to House interim research projects. "Recommendation O" was stated this way: "State government extend forthwith an Environmental Resource Program ("ERP") to northwest

Florida." And, "Recommendation N" requested that, "Funding be increased for the Northwest Florida Water Management District."

Sometime over the next two weeks, DEP Secretary David Struhs plans to visit his agency's Northwest District Office and talk to employees about the charges leveled in the grand jury report, as well as meet with members of the Northwest Florida legislative delegation and citizen groups, to get a more complete picture of the situation.

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Report #2: July 15-August 16, 1999

Background:

Please refer to Report #1.

Status of DEP's Activities:

DEP staff continues to deliberate in-house about what additional data needs to be collected and what research needs to be conducted pursuant to the legislative directive. The internal reorganization of DEP has resulted in some delay in finalizing the agency's workplan, which will include a division of labor with the Northwest Florida Water Management District (NFWMD) staff.

Status of NFWMD's activities:

NFWMD staff continues to let DEP take the lead on coordinating the workplan.

Related events/information:

DEP Secretary David Struhs recently met with his agency's Northwest District Office staff in Pensacola to discuss, among other issues, the findings of the June 1999 Escambia County Grand Jury report critical of DEP's environmental protection programs in the area. The 120-page report included 27 grand jury recommendations, two of which are related to House interim research projects. "Recommendation O" was "State government extend forthwith an Environmental Resource Program ("ERP") to northwest Florida." And, "Recommendation N" requested that "Funding be increased for the Northwest Florida Water Management District."

Also, the Escambia County Commission has proposed the creation of a 16-member stormwater task force, comprised of environmental regulators, residents, business interests, and local government leaders, to recommend ways to control stormwater runoff problems blamed for the area's declining water quality. The County Commission hopes the Pensacola City Commission and the Escambia County Utilities Authority will participate in the task force.

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Report #3: August 17 - September 20, 1999

Background:

Please refer to Report #1.

Status of Activities by DEP and the NFWFMD:

Staff of DEP and the NFWFMD met for about 90 minutes Monday, September 20, to review an outline of the plan required by Chapter 99-353, L.O.F., to accept assignments for drafting specific portions of the plan, and to highlight what may be the key issues in any plan to implement an ERP program in Northwest Florida.

DEP and NFWFMD staff identified what they expect to be the major issues the Legislature will consider when crafting the Panhandle ERP program. At the top of the list is whether the NFWFMD ERP regulations will be exempt from the provisions of the Bert Harris Jr. Private Property Rights Act (Chapter 70, F.S.), as are the ERP regulations of the other four WMDs. DEP and NFWFMD staff likely will draft a series of scenarios, ranging from complete exemption, to no exemption, to certain elements of the ERP program being exempt. Some concerns were raised by agency staff over the prospect of the Harris Act applying to ERP regulations.

The other key issues identified are whether to grandfather-in, under the current law, those projects that are either underway, have submitted applications, or otherwise are in the process; what should be included in the NFWFMD ERP rules; and how much time and staff NFWFMD needs to implement an ERP program.

The report tentatively will include the following chapters:

- Current Status of Wetland and Surface Water Regulatory Programs;
- General Program Implementation Issues;
- Grandfathering issues; and
- Implications of Chapter 70, F.S.

Other chapters on draft rules and draft legislation may be included.